

**Brian Berson**

CBN 130249  
1000 Brannan St.  
#488  
San Francisco, CA 94103  
415-788-2707

Attorney for: ADONIS TORRES

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	) No. CR 20-0480-06 WHA
	)
Plaintiff,	) <b>ADONIS TORRES'</b>
	) <b>SENTENCING MEMORANDUM</b>
	)
vs.	) Date: March 1, 2022
	) Time: 2:00 p.m.
ADONIS TORRES	) Courtroom: The Honorable
Defendant.	) Judge Alsup

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Mr. Torres was the child of Honduran farm workers. Despite working on a farm, they struggled to provide food for Mr. Torres and his siblings. PSR paragraphs 53, 54. His father left the family when Mr. Torres was eight years old. *Id.* Rather than abandoning the family, his father went to the United States to try to make some money to send back to his family so that they could eat more regularly. He was gone for five years, during which he regularly sent money to Mr. Torres' mother for that purpose. *Id.*

1 For most of his childhood, Mr. Torres' family couldn't even  
2 afford to buy him shoes, so he went everywhere barefooted, causing  
3 constant injuries to his feet. *Id.*

4 Due partly to the above factors, the presentence report (PSR)  
5 recommended that the Court sentence Mr. Torres to 30 months in  
6 prison, below his Guidelines range of 41-51 months. PSR  
7 Justification section, p.2.

8  
9 The Justification section has a significant error that counsel  
10 overlooked until preparation of this memorandum. On page one of  
11 that section, apparently to justify not recommending a lower  
12 variance, the PSR states: "Mr. Torres has prior criminal  
13 convictions for Transport/Sell Narcotic/Controlled Substance,  
14 Solicit Specified Acts, and Illegal Entry." In fact, Mr. Torres  
15 only has one prior conviction, for illegal entry, as correctly  
16 noted earlier in the PSR, within the prior records section  
17 (paragraphs 38-42) that was included in the draft provided to  
18 counsel prior to the final PSR provided to the Court. Paragraph 41  
19 notes the illegal entry conviction, which resulted in a 60-day  
20 sentence and two criminal history points, as noted correctly in  
21 the Criminal History (CH) computation section, paragraph 42.

22  
23 We submit that CH 2 is overstated for somebody with one prior  
24 conviction - a status conviction - that resulted in a 60-day  
25  
26  
27  
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29

1 sentence.<sup>1</sup> Had Mr. Torres been in CH 1, perhaps more appropriate  
2 for somebody with only one prior 60-day sentence for an illegal  
3 entry conviction, his guidelines would have been 37-46 months.

4 As noted in PSR paragraph 3, the plea agreement contemplated Mr.  
5 Torres receiving a two-point offense level adjustment for the  
6 "global disposition" that had been contemplated. Unfortunately,  
7 one of the codefendants became a fugitive, making it impossible  
8 for Mr. Torres to obtain the benefit of this part of the deal he  
9 entered. While the government is certainly not to blame for this,  
10 neither is Mr. Torres. Had Mr. Torres received the extra two  
11 points off his offense level for the global disposition factor in  
12 addition to the CH 1 category we suggested would be more  
13 appropriate than CH2, his guidelines would have been 30-37 months.  
14

15 Thus, the 30-month sentence is arguably the low end of the range  
16 that Mr. Torres should have been in anyway, but for a rigid CH  
17 guidelines factor requiring two points for any 60-day sentence,  
18 regardless of the nature of the conviction, and the absconding of  
19 a codefendant he had no control over.  
20

21 But there are additional factors in this case that the Court  
22 should consider in rendering a just sentence. For one, Mr. Torres  
23 has been in continuous custody since December 10, 2020. PSR para.  
24 4. He has spent the overwhelming majority of his imprisonment  
25  
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29 <sup>1</sup> This objection was raised in response to the draft PSR.

1 under harsher conditions of confinement than anybody could have  
2 anticipated prior to the pandemic. He has received substantially  
3 less recreation and human contact time than he would have received  
4 in pre-pandemic days. He has been allowed little to no in-person  
5 visitation, not with friends nor even his own lawyer.  
6

7 Additionally, Mr. Torres appears to be the least culpable of all  
8 of the defendants in this case. Although the PSR disagreed with  
9 our position that he should get an adjustment for minor role,  
10 paragraph 19 notes that "the government placed (co-defendant)  
11 Carrero at a level slightly above Torres due to her familial  
12 connections in the organization and her direct contact with one of  
13 the suppliers ..." The wiretaps in this case rarely captured Mr.  
14 Torres in drug related calls compared to the others. PSR  
15 paragraphs 11-20 reflect less drugs and less drug dealing by Mr.  
16 Torres than his codefendants.  
17  
18

19 Earlier this afternoon, Ms. Carrero was sentenced to 19 months  
20 imprisonment. We understand the awful human factors involved in  
21 Ms. Carrero's case. However, there is little question about the  
22 relative culpability between Mr. Torres and Ms. Carrero. He was  
23 below her. He had less and did less.  
24

25 We know the Court is distressed by the prevalence of the primary  
26 drug in this case, fentanyl. It is a destructive drug, responsible  
27 for many deaths. But Mr. Torres' motivation in this offense was  
28 not mercenary, praying cynically on the addictions of others.  
29

1 Although Mr. Torres had successfully completed drug treatment (PSR  
2 paragraphs 61-62), he'd relapsed prior to his involvement in this  
3 case. "He noted cocaine was his primary drug of choice and he  
4 became involved in the instant offense in order to support his own  
5 drug habit." PSR para. 61.

6  
7 But there was an additional motivation. As that same PSR  
8 paragraph notes, the wire picked up conversations in which Mr.  
9 Torres professed his love for Ms. Carrero, a love that was not  
10 reciprocated.

11 CONCLUSION

12  
13 Ms. Carrero received a just sentence. Principles of codefendant  
14 disparity should lead this Court to sentence Mr. Torres to no more  
15 than any of his codefendants receive. Even without that disparity,  
16 the Court's concern about the ravages of fentanyl should be  
17 balanced with Mr. Torres' motivation to engage in this crime, as  
18 well as his own sad history.  
19

20  
21 Respectfully submitted,

22  
23 Date: February 22, 2022

24 /s/  
25 Brian P Berson  
26 Attorney for Adonis Torres  
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